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Jason, J. Chapp... 44,182  
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Case 7258XR

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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of :  
G. M. FRANKENBACH ET AL. :  
Serial No. 09/309,128 : Group Art Unit 1751  
Filed May 10, 1999 : Examiner J. Hardee  
Confirmation No. 7129 :  
For CLEAR OR TRANSLUCENT AQUEOUS FABRIC  
SOFTENER COMPOSITIONS CONTAINING HIGH  
ELECTROLYTE AND OPTIONAL PHASE  
STABILIZER

RESPONSE

Commissioner for Patents  
Washington, D.C. 20231  
Dear Sir:

In response to the Office Action dated October 3, 2002 (Paper No. 17), please consider the Request for Continued Examination ("RCE") submitted herewith and the following remarks. The Commissioner is hereby authorized to charge any necessary fees, which Applicant believes to be \$110.00 for a one-month extension of time, to Deposit Account No. 16-2480.

REMARKS

Claims 1-5, 7, 15-18, and 26-30 are in the application.

Election/Restriction

The Office Action indicates that the present claims are in condition for allowance except for the presence of subject matter drawn to inventions non-elected with traverse in Paper No. 5. The Office Action goes on to indicate that the non-elected solvents and stabilizers are obvious. Applicants acknowledge the allowability of the elected subject matter. However, since the independent claims are linking claims, Applicants submit that the non-elected species should now be rejoined with the claims and the claims be examined in their entirety. See MPEP § 809 (8<sup>th</sup> ed. 2001). Applicants address the present obviousness rejection below.

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Rejection under 35 U.S.C. § 103

Claims 1-5, 7, 15-18, and 26-28 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Baker et al., U.S. Patent No. 5,545,350. Applicants respectfully traverse this rejection. Baker et al. teach solid particulate fabric softening compositions comprising from about 50% to about 95% of biodegradable diester quaternary ammonium fabric softening compound and from about 3% to about 30% of select viscosity and/or dispersibility modifiers. Baker et al. also teach concentrated liquid compositions comprising from about 15% to about 50% of biodegradable diester quaternary ammonium fabric softening compound, from about 0.1% to about 30% of select viscosity and/or dispersibility modifiers, and liquid carrier.

Baker et al. do not teach or suggest a fabric softening composition comprising from about 2% to about 80% of fabric softener, from about 1% to about 40% of principal solvent having a ClogP of from about -2.0 to about 2.6, from about 0.5% to about 10% of electrolyte, from about 0.1% to about 15% of phase stabilizer, and water, as presently claimed.

Furthermore, Baker et al. do not teach or suggest a clear or translucent fabric softening composition. Indeed, the compositions of Baker et al. are either solid particulate compositions or concentrated liquid compositions that are dispersions. This is evident based on the disclosure of Baker et al., e.g., at col. 16, lines 44-49; col. 21, lines 30-33; col. 23, lines 18-19; col. 35, lines 1-2 and lines 29-67.

Baker et al. disclose compositions that are either solid or concentrated liquid dispersions, in contrast to clear or translucent compositions as presently claimed. Baker et al. therefore do not teach or suggest a clear or translucent fabric softening composition comprising from about 2% to about 80% of fabric softener, from about 1% to about 40% of principal solvent having a ClogP of from about -2.0 to about 2.6, from about 0.5% to about 10% of electrolyte, from about 0.1% to about 15% of phase stabilizer, and water, as presently claimed. As a result, Claims 1-5, 7, 15-18, and 26-28 are unobvious and patentable over Baker et al. under 35 U.S.C. § 103(a).


The Cover Sheet for the Office Action indicates that Claims 29-30 are objected to, however, the Office Action does not address the objections with respect to Claims 29-30. Based on the previous Office Action dated March 5, 2002 (Paper No. 14), Applicants assume that Claims 29-30 remain allowable if rewritten in independent form. In addition, based on the remarks herein, Applicants submit that all claims are allowable over the cited reference.

**CONCLUSION**

In view of the foregoing remarks, reconsideration of the application and allowance of all claims are respectfully requested.

Respectfully submitted,

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February 3, 2003

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